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Attorneys for Plaintiff
VICKI CAPRIO and DUANE A. BARBAROTTO
as decedent Nicholas Barbarotto's Successors in Interest

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT COURT OF CALIFORNIA**

NICHOLAS J.BARBAROTTO,individually
and as Trustee of the NICHOLAS
J.BARBAROTTO Revocable Living Trust
Agreement dated November 2, 2005,

Plaintiffs,

vs.

HARTFORD LIFE INSURANCE
COMPANYa corporation doing business as
THE HARTFORD and HARTFORD LIFE
AND ACCIDENT INSURANCE COMPANY
and Does 1 through 20, inclusive,

Defendants.

Case No.: C06-1278 CW

**DECLARATION OF MATTHEW
BREKHUS IN SUPPORT OF MOTION
FOR RELIEF**

Civ. P. 60 (b)

Judge: Claudia Wilken
Date: June 5, 2008
Time: 2:00 p.m.
Ct rm: 2, 4th Floor

I, MATTHEW BREKHUS, declare:

1. I was the attorney of record for Nicholas Barbarotto individually and as Trustee of the NICHOLAS J.BARBAROTTO Revocable Living Trust Agreement dated November 2, 2005 in the above entitled matter,
2. Nicholas Barbarotto died on February 14, 2006. A true and correct copy of the Certificate of Death is attached hereto as Exhibit A
3. This action was filed on February 22, 2006.
4. Neither the insurance policies which were the basis for the present action nor the present action itself were included in the corpus of the Nicholas J. Barbarotto Revocable Living Trust dated November 2, 2005. A true and correct copy of the Declaration of Trust for the Nicholas J. Barbarotto Revocable Living Trust dated November 2, 2005 is attached hereto as Exhibit B.
5. Counsel for Plaintiff entered into a stipulation with Defendants to dismiss this action with prejudice. On October 19, 2006 Judge Breyer entered a Stipulation and Order for Dismissal of Entire Action with Prejudice.
6. Viki Caprio and Duane A. Barbarotto are the children of Nicholas J. Barbarotto and are Decedent Nicholas Barbarotto's successor's in interest (as defined in Section 377.11 of the California Code of Civil Procedure) and succeed to the Decedent's interest in the claim.
7. I am the attorney of record for Vicky Caprio and Duane Barbarotto as Plaintiff Nicholas Barbarotto's successors in interest in a subsequent action on the same matter titled VICKI CAPRIO and DUANE A. BARBAROTTO as decedent Nicholas Barbarotto's Successors in Interest vs. HARTFORD LIFE INSURANCE COMPANY a corporation doing business as THE HARTFORD and HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY and Does 1 through 20, inclusive, United States District Court Northern District of California Case No. 08-0338 CW.

I declare under penalty of perjury that the foregoing is true and correct and within my personal knowledge. This declaration was executed within the United States on April 25, 2008.

_____/S/_____

MATTHEW BREKHUS

EXHIBIT

A

STATE OF CALIFORNIA
CERTIFICATION OF VITAL RECORD
COUNTY OF SAN MATEO
HEALTH DEPARTMENT
SAN MATEO, CALIFORNIA

STATE FILE NUMBER		LOCAL REGISTRATION NUMBER	
3200641000568			
CERTIFICATE OF DEATH <small>USE BLACK INK ONLY. NO ERASERS. WRITE DATE OF ALTERATION IN LEFT MARGIN.</small>			
DECEASED PERSONAL DATA 1. NAME OF DECEASED - FIRST (Given) NICHOLAS 2. MIDDLE JOSEPH 3. LAST (Family) BARBAROTTO 4. DATE OF BIRTH (month/day/year) 02/25/1923 5. AGE (at death) 82 6. SEX M 7. DATE OF DEATH (month/day/year) 02/14/2006 8. HOUR (24-hour) 0200 9. BIRTH STATE/FOREIGN COUNTRY California 10. SOCIAL SECURITY NUMBER 553-20-0898 11. EVER IN U.S. ARMED FORCES <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UMC 12. MARITAL STATUS (at time of death) Widowed 13. RACE Caucasian 14. US DECEASED'S RACE - (If in 3 races, give 1st, 2nd, 3rd) Caucasian 15. YEARS OF OCCUPATION 55 16. USUAL OCCUPATION (Type or type of work for most of life. Do not take retired) Attorney 17. KIND OF BUSINESS OR INDUSTRY (e.g., factory work, road construction, employment for gov., etc.) Law			
USUAL RESIDENCE 18. DECEASED'S RESIDENCE (Street and number or location) 110 Escanyo Drive 19. CITY South San Francisco 20. COUNTY/PROVINCE San Mateo 21. ZIP CODE 94080 22. YEARS IN COUNTRY 50 23. STATE/FOREIGN COUNTRY California			
IMMEDIATE FAMILY INFORMATION 24. INFORMANT'S NAME, RELATIONSHIP Vicki Caprio - Daughter 25. INFORMANT'S ADDRESS (Street and number or rural route, city or town, state, ZIP) 3843 Kent Way, South San Francisco, CA 94080 26. NAME OF SURVIVING SPOUSE - FIRST Francesca 27. MIDDLE Ettore 28. LAST Barbarotto 29. BIRTH STATE Italy 30. NAME OF MOTHER - FIRST Giulia 31. MIDDLE Barb 32. LAST Barb 33. BIRTH STATE Italy			
PLURAL INFORMATION 34. DISPOSITION DATE (month/day/year) 02/21/2006 35. PLACE OF FINAL DISPOSITION Olivet Memorial Park, 1601 Hillside Boulevard, Colma, CA 94014 36. TYPE OF DISPOSITION Burial 37. NAME OF FUNERAL ESTABLISHMENT Duggan's Serra Mortuary 38. LICENSE NUMBER FD 1098 39. SIGNATURE OF LOCAL REGISTRAR SCOTT A. MORROW, M.D. 40. DATE (month/day/year) 02/17/2006			
PLACE OF DEATH 41. COUNTY San Mateo 42. PARTIAL ADDRESS OR LOCATION (Street and number or location) 1200 El Camino Real 43. CITY South San Francisco 44. CAUSE OF DEATH (Enter the cause of death - disease, injury, or complication - that directly caused death. DO NOT give medical details such as the chain of events, respiratory arrest, or ventricular fibrillation without specifying the primary cause. DO NOT abbreviate.) Respiratory Failure 45. CHRONIC DISEASE (If any, specify the disease, injury, or complication that directly caused death. DO NOT give medical details such as the chain of events, respiratory arrest, or ventricular fibrillation without specifying the primary cause. DO NOT abbreviate.) Chronic Obstructive Pulmonary Disease 46. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH (If any, specify the condition, injury, or complication that directly caused death. DO NOT give medical details such as the chain of events, respiratory arrest, or ventricular fibrillation without specifying the primary cause. DO NOT abbreviate.) Congestive Heart Failure, Lymphedema 47. TIME OF OPERATION (If any, specify the time of day, month, and year) NO 48. SIGNATURE OF DECEASED (If any, specify the signature) NO 49. SIGNATURE OF LOCAL REGISTRAR SCOTT A. MORROW, M.D. 50. DATE (month/day/year) 02/14/2006 51. SIGNATURE OF DECEASED (If any, specify the signature) NO 52. SIGNATURE OF LOCAL REGISTRAR SCOTT A. MORROW, M.D. 53. DATE (month/day/year) 02/14/2006 54. SIGNATURE OF DECEASED (If any, specify the signature) NO 55. SIGNATURE OF LOCAL REGISTRAR SCOTT A. MORROW, M.D. 56. DATE (month/day/year) 02/14/2006 57. SIGNATURE OF DECEASED (If any, specify the signature) NO 58. SIGNATURE OF LOCAL REGISTRAR SCOTT A. MORROW, M.D. 59. DATE (month/day/year) 02/14/2006 60. SIGNATURE OF DECEASED (If any, specify the signature) NO 61. SIGNATURE OF LOCAL REGISTRAR SCOTT A. 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EXHIBIT

B

COPY

**Declaration
of
Trust**

NICHOLAS J. BARBAROTTO

Dated November 2, 2005

LAW OFFICES
JOHN J. LANK, JR.
5172 MISSION STREET
SAN FRANCISCO, CALIFORNIA 94112
(415) 586-3200

COPY

NICHOLAS J. BARBAROTTO

REVOCABLE LIVING TRUST AGREEMENT



THIS REVOCABLE LIVING TRUST AGREEMENT, is made and entered into on November 2, 2005 in the City of South San Francisco, County of San Mateo, State of California, by and between NICHOLAS J. BARBAROTTO, hereinafter referred to as Trustor and, NICHOLAS J. BARBAROTTO, hereinafter referred to as Trustee.

I, NICHOLAS J. BARBAROTTO, declare I am a widower, that my wife, Tamara Barbarotto, predeceased me on October 18, 2002, after 57 years of marriage; and that I have two (2) living children the issue of a said marriage, namely, DUANE A. BARBAROTTO, and VICKI LYNN CAPRIO; and one(1) deceased child, namely, WAYNE F. BARBAROTTO; that I also have four (4) adult grandchildren, namely, BRIGETTE CAPRIO GAUTHIER, JASON G. BARBAROTTO, BRETT A. CAPRIO and JOSHUA J. BARBAROTTO and six (6) Great-grandchildren, at this time, all of whom are minors, and a Step Great-grandson, who is also a minor; and that I have no other children living or deceased.

COPY

WITNESSETH

WHEREAS, Trustor is now the owner of three (3) parcels of real property described in Schedule "A" attached hereto as his sole and separate property; and

WHEREAS, Trustor desires to make provision for the care and management of such properties in the manner hereinafter provided; and

WHEREAS, Trustor desires to transfer all of said real property to the Trustee and to express and provide the terms and conditions upon which said properties shall be governed and held by the Trustee;

NOW, THEREFORE, for the reasons above set forth, and in order to define the terms, conditions and trusts upon which the Trustee shall hold and administer said properties and in consideration of the mutual covenants of the parties set forth herein, Trustor and Trustee agree as follows:

ARTICLE ONE

Transfer of Property

Trustor, in consideration of the acceptance by Trustee of the Trust herein created, does hereby convey, transfer, assign and deliver to Trustee, his successors in trust and assigns, all of the property set forth and described in Schedule "A" attached hereto and by reference made a part hereof, all of which said property,

held by Trustee hereunder, is herein referred to as the Trust Estate.

ARTICLE TWO

Subsequent Addition To The Trust Estate

Trustor, or any other person or persons, or under the will of the Trustor or of any other person or persons, shall have the right at any time to add property to the Trust Estate acceptable to Trustee, and such property when received and accepted by Trustee shall become a part of the Trust Estate and be subjected to the terms and conditions of this Agreement or any part thereof.

ARTICLE THREE

Provisions Applicable During Lifetime of NICHOLAS J. BARBAROTTO

Unless sooner revoked by Trustor, the Trustee shall hold and administer this Trust subject to the terms, provisions and conditions thereof as hereinafter set forth for as long as said NICHOLAS J. BARBAROTTO shall live and shall care for and manage the Trust Estate and collect any income derived therefrom, and, after the payment of all taxes and assessments thereon, if any, and all charges incident to the management thereof, if any, dispose of the net income and principal or corpus thereof as follows:

a) NET INCOME: The Trustee shall pay the entire net income of the Trust Estate to or for the benefit of the Trustor, NICHOLAS J. BARBAROTTO, during his entire lifetime at such intervals as the said NICHOLAS J. BARBAROTTO may direct.

b) **PRINCIPAL:** The Trustee, during the entire lifetime of the Trustor, NICHOLAS J. BARBAROTTO, shall have the power in his absolute discretion, and/or as the said NICHOLAS J. BARBAROTTO from time to time may require or direct, to use and apply the principal of said Trust Estate, or any part or portion thereof, for the care, support, maintenance and welfare of NICHOLAS J. BARBAROTTO as the Trustee shall or may deem suitable or necessary for such purposes.

ARTICLE FOUR

Provisions Applicable Upon the Death of NICHOLAS J. BARBAROTTO

Upon the death of NICHOLAS J. BARBAROTTO, the Successor Trustee and/or Trustees designated in this Trust Agreement shall take possession and control of the assets remaining in the Trust Estate, and, after making provision for the payments provided or required by law, including (a) the expenses of the last illness and funeral of the Trustor, NICHOLAS J. BARBAROTTO and (b) any of his valid and enforceable debts and (c) any Federal and State death taxes due upon his death, shall hold, care for, manage and administer the same, or otherwise perform the duties and obligations of the Trustee thereunder, and shall thereafter distribute the remaining assets of the Trust Estate to the respective beneficiaries entitled thereto in the manner and in the proportions hereinafter directed by this Trust Agreement free and clear of any and all Trusts herein created.

ARTICLE FIVE

Distribution of Remaining Assets of Trust Estate

Upon the death of NICHOLAS J. BARBAROTTO and after making provision for the payments provided or required by the terms and provisions of Article Four hereof, the Successor Trustee and/or Trustees is or are hereby directed to distribute the remainder of said Trust Estate, free and clear thereof, as follows:

1. As to the real property commonly designated as 110 Escanyo Drive, South San Francisco, California, more particularly described in Schedule "A" hereof, the same is to be distributed by the Successor Trustee and/or Trustees to the children of the Trustor NICHOLAS J. BARBAROTTO, namely DUANE A. BARBAROTTO and VICKI LYNN CAPRIO, equally, share and share alike, each receiving an undivided one-half ($\frac{1}{2}$) interest therein as a tenant-in-common, provided each of them survives the said Trustor.

However, in the event any of the said children of the Trustor predeceases the Trustor or dies in a common disaster with the Trustor, then said real property is to be distributed in the following manner:

a) If DUANE A. BARBAROTTO predeceases the Trustor, then his one-half ($\frac{1}{2}$) tenancy-in-common expectancy interest, is to be distributed to his children, namely, JASON G. BARBAROTTO and JOSHUA J. BARBAROTTO, equally, or to the survivor of them if either predeceases the Trustor without leaving issue surviving, otherwise

to their surviving issue equally by right of representation.

b) If VICKI LYNN CAPRIO predeceases the Trustor, then her one-half ($\frac{1}{2}$) tenancy-in-common expectancy interest, is to be distributed to her children, namely, BRIGETTE CAPRIO GAUTHIER and BRETT A. CAPRIO, equally, or to their surviving issue in equal shares by right of representation if either of them predeceases the Trustor.

2. AS to the real property commonly designated as 3843 Kent Way, South San Francisco, California, more particularly described in Schedule "A" hereof, the same is to be distributed by the Successor Trustee and/or Trustees to the daughter of the Trustor, namely, VICKI LYNN CAPRIO, as her sole and separate property, if she survives the Trustor, otherwise, if she predeceases the Trustor or dies in a common disaster with the Trustor, then to her surviving children, namely, BRIGETTE CAPRIO GAUTHIER and BRETT A. CAPRIO, equally, each receiving an undivided one-half ($\frac{1}{2}$) interest therein as a tenant-in-common as her or his sole and separate property or to their surviving issue in equal shares by right of representation if either of them also predeceases the Trustor.

3. As to the real property commonly designated as 3749 North Abby, Fresno, California, more particularly described in Schedule "A" hereof, the same is to be distributed by the Successor Trustee, and/or Trustees to the children of the Trustor NICOLAS J.

BARBAROTTO, namely, DUANE A. BARBAROTTO and VICKI LYNN CAPRIO, equally, share and share alike, each receiving an undivided one-half ($\frac{1}{2}$) interest therein as a tenant-in-common, provided each of them survives the said Trustor.

However, in the event any of the said children of the Trustor predeceases the Trustor or dies in a common disaster with the Trustor, then said real property is to be distributed in the following manner:

a) If DUANE A. BARBAROTTO predeceases the Trustor, then his one-half ($\frac{1}{2}$) tenancy-in-common expectancy interest, is to be distributed to his children, namely, JASON G. BARBAROTTO and JOSHUA J. BARBAROTTO, equally, or to the survivor of them if either also predeceases the Trustor without leaving issue surviving, otherwise to their surviving issue equally by right of representation.

b) If VICKI LYNN CAPRIO predeceases the Trustor, then her one-half ($\frac{1}{2}$) tenancy-in-common expectancy interest, is to be distributed to her children, namely, BRIGETTE CAPRIO GAUTHIER and BRETT A. CAPRIO, equally, or to their surviving issue in equal shares by right of representation if either of them also predeceases the Trustor.

ARTICLE SIX

Provisions Applicable To The Office Of Trustee

The original Trustee under this declaration of Trust Agreement

shall be NICHOLAS J. BARBAROTTO. In the event of the death or incapacity of the said NICHOLAS J. BARBAROTTO for any reason whatsoever, or in the event he becomes unwilling or otherwise fails to act as such Trustee, then the Trustor's children, namely, DUANE A. BARBAROTTO and VICKI LYNN CAPRIO are designated and appointed as Co-Successor Trustees hereunder, and shall have and exercise all of the powers, duties and obligations of the original Trustee.

In the event of the death or incapacity of the either of the said Co-Trustees for any reason whatsoever, or one of them becomes unwilling or otherwise fails to act as such Successor Trustee, then the other Co-Trustee shall act with all of the powers, duties and obligations of the original Trustee hereunder.

No bond shall be required of any Trustee hereunder whether the original Trustee or any successor Trustee.

No Trustee or Successor Trustee shall be entitled to any compensation for his or her services as such whether the same constitutes ordinary or extraordinary services.

The appointment and qualification of a Successor Trustee provided for in this Revocable Trust Agreement shall be effective without any Court proceeding or decree. Each Successor Trustee shall indicate acceptance of said office by signing an original of this Trust Agreement at the time such Trustee takes office.

Any Trustee serving hereunder may resign at any time by giving written notice of such intention to resign to the then adult

beneficiary of said Revocable Trust Agreement after which the Successor Trustee or Trustees named herein shall succeed to said office.

The incompetence of an individual Trustee serving hereunder shall be deemed a resignation by such Trustee.

ARTICLE SEVEN

Revocation and Amendment During Trustor's Lifetime

Trustor NICHOLAS J. BARBAROTTO shall have the power at any time during his lifetime to modify, alter, amend, revoke or terminate this Trust Agreement in whole or in part. Said action shall be effected by executing an appropriate writing attached to the Trust Agreement and by delivering an executed copy thereof to the Trustee.

The power to revoke or amend this Trust Agreement is personal to the Trustor NICHOLAS J. BARBAROTTO and shall not be exercisable on his behalf by a conservator, agent or any other person unless by the Trustor's agent under a durable power of attorney which expressly contains a provision authorizing the agent to do so under the power of attorney.

Upon the death of the Trustor NICHOLAS J. BARBAROTTO all trusts created herein shall be, and the same are hereby expressly made irrevocable and unamendable.

ARTICLE EIGHT

Miscellaneous Provisions

1. This Revocable Trust Agreement has been executed in the State of California and accepted by the Trustee therein. All questions pertaining to the validity, interpretation, construction and administration of said Agreement shall be determined in accordance with the laws of said State of California.

2. The words, "children" and "issue" as used herein shall include children and issue of children, legally adopted children and the lawful issue of legally adopted children.

IN WITNESS WHEREOF, the parties hereto have executed this Revocable Trust Agreement on November 2, 2005.

Nicholas J. Barbarotto
NICHOLAS J. BARBAROTTO, Trustor

Nicholas J. Barbarotto
NICHOLAS J. BARBAROTTO, Trustee

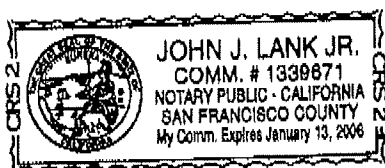
ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN MATEO)

Nicholas J. Barbarotto
NICHOLAS J. BARBAROTTO (Signature of Affiant)

Subscribed and sworn to before me on this 2nd day of
November, 2005, by NICHOLAS J. BARBAROTTO,
personally known to me or proved to me on the basis of satisfactory
evidence to be the person whose name is subscribed to the within
instrument and acknowledged to me that he executed the same in his
authorized capacity, and that by his signature on the instrument
the person or the entity upon behalf of which the person acted,
executed the instrument.

WITNESS my hand and official seal.



John J. Lank Jr.
JOHN J. LANK, JR., Notary Public

(Seal)

Nicholas J. Barbarotto Trust Agreement

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SCHEDULE "A"

Trustor's Assets Initially Transferred Into Trustor's Revocable Living Trust Agreement.

REAL PROPERTY:

1. All that certain real property situated in the City of South San Francisco, State of California, commonly designated as and described as follows:
 - 110 Escanyo Drive, South San Francisco, California
 - "Lot 50, Block 35, as designated on the Map entitled "RANCHO BURI BURI MAP NO. 3-A SOUTH SAN FRANCISCO, SAN MATEO COUNTY, CALIFORNIA", which Map was filed in the Office of the Recorder of the County of San Mateo, State of California, on May 11, 1955 in Book 42 of Maps at pages 16 and 17.
(Assessor's Parcel No.: 010-324-290)
2. All that certain real property situated in the City of South San Francisco, State of California, commonly designated as and described as follows:
 - 3843 Kent Way, South San Francisco, California
 - "Lot 76 in Block 15, as shown on Map entitled "WESTBOROUGH-PARK UNIT NO. 3 B, SOUTH SAN FRANCISCO, SAN MATEO COUNTY, CALIFORNIA", which map was filed in the Office of the County Recorder of San Mateo County on February 11, 1971 in Book 71 of Maps at pages 47 to 51. (Assessor's Parcel No. 091-521-220)
3. All that certain real property situated in the City of Fresno, County of Fresno, State of California, consisting of four (4) apartment units commonly designated as and described as follows:
 - 3749 North Abby, Fresno, California
 - "Lot 6 in Block 12 of TRACT NO. 1251, MANCHESTER PARK in the City of Fresno, County of Fresno, State of California, according to the Map recorded in Book 15, Pages 90, 91 and 92 of Plats, Fresno County Records. (Assessor's Parcel No. 437-041-21)